Bulletin No. 1996–48
November 25, 1996

HIGHLIGHTS OF THIS ISSUE

These synopses are intended only as aids to the reader in identifying the subject matter covered. They may not be relied upon as authoritative interpretations.

INCOME TAX

REG–251520–96, page 15.
Proposed regulations under section 861 of the Code relate to the tax treatment of certain transactions involving the transfer of computer programs. A public hearing will be held on March 19, 1997.

EMPLOYEE PLANS

Notice 96–59, page 10.
Weighted average interest rate update. Guidelines are set forth for determining for November 1996, the weighted average interest rate and the resulting permissible range of interest rates used to calculate current liability for purposes of the full funding limitation of section 412(c)(7) of the Code as amended by the Omnibus Budget Reconciliation Act of 1987 and by the Uruguay Round Agreements Act (GATT).

EXEMPT ORGANIZATIONS

Announcement 96–125, page 21.
A list is given of organizations now classified as private foundations.

EXCISE TAX

T.D. 8685, page 4.
Final regulations under section 6302 of the Code relate to deposits of excise taxes.

ADMINISTRATIVE

Rev. Proc. 96–52, page 10.
This procedure describes the application procedures for becoming an acceptance agent for purposes of facilitating the issuance of certain taxpayer identifying numbers, and the requisite agreement that an acceptance agent must execute with the Internal Revenue Service.

Finding Lists begin on page 25.
Announcements of Disbarments and Suspensions begin on page 22.

Mission of the Service

The purpose of the Internal Revenue Service is to collect the proper amount of tax revenue at the least cost; serve the public by continually improving the quality of our products and services; and perform in a manner warranting the highest degree of public confidence in our integrity, efficiency and fairness.

Statement of Principles of Internal Revenue Tax Administration

The function of the Internal Revenue Service is to administer the Internal Revenue Code. Tax policy for raising revenue is determined by Congress.

With this in mind, it is the duty of the Service to carry out that policy by correctly applying the laws enacted by Congress; to determine the reasonable meaning of various Code provisions in light of the Congressional purpose in enacting them; and to perform this work in a fair and impartial manner, with neither a government nor a taxpayer point of view.

At the heart of administration is interpretation of the Code. It is the responsibility of each person in the Service, charged with the duty of interpreting the law, to try to find the true meaning of the statutory provision and not to adopt a strained construction in the belief that he or she is ''protecting the revenue.'' The revenue is properly protected only when we ascertain and apply the true meaning of the statute.

The Service also has the responsibility of applying and administering the law in a reasonable, practical manner. Issues should only be raised by examining officers when they have merit, never arbitrarily or for trading purposes. At the same time, the examining officer should never hesitate to raise a meritorious issue. It is also important that care be exercised not to raise an issue or to ask a court to adopt a position inconsistent with an established Service position.

Administration should be both reasonable and vigorous. It should be conducted with as little delay as possible and with great courtesy and considerateness. It should never try to overreach, and should be reasonable within the bounds of law and sound administration. It should, however, be vigorous in requiring compliance with law and it should be relentless in its attack on unreal tax devices and fraud.

Introduction

The Internal Revenue Bulletin is the authoritative instrument of the Commissioner of Internal Revenue for announcing official rulings and procedures of the Internal Revenue Service and for publishing Treasury Decisions, Executive Orders, Tax Conventions, legislation, court decisions, and other items of general interest. It is published weekly and may be obtained from the Superintendent of Documents on a subscription basis. Bulletin contents of a permanent nature are consolidated semiannually into Cumulative Bulletins, which are sold on a single-copy basis.

It is the policy of the Service to publish in the Bulletin all substantive rulings necessary to promote a uniform application of the tax laws, including all rulings that supersede, revoke, modify, or amend any of those previously published in the Bulletin. All published rulings apply retroactively unless otherwise indicated. Procedures relating solely to matters of internal management are not published; however, statements of internal practices and procedures that affect the rights and duties of taxpayers are published.

Revenue rulings represent the conclusions of the Service on the application of the law to the pivotal facts stated in the revenue ruling. In those based on positions taken in rulings to taxpayers or technical advice to Service field offices, identifying details and information of a confidential nature are deleted to prevent unwarranted invasions of privacy and to comply with statutory requirements.

Rulings and procedures reported in the Bulletin do not have the force and effect of Treasury Department Regulations, but they may be used as precedents. Unpublished rulings will not be relied on, used, or cited as precedents by Service personnel in the disposition of other cases. In applying published rulings and procedures, the effect of subsequent legislation, regulations, court decisions, rulings, and procedures must be considered, and Service personnel and others concerned are cautioned against reaching the same conclusions in other cases unless the facts and circumstances are substantially the same.

The Bulletin is divided into four parts as follows:

Part I.—1986 Code.
This part includes rulings and decisions based on provisions of the Internal Revenue Code of 1986.

Part II.—Treaties and Tax Legislation.
This part is divided into two subparts as follows: Subpart A, Tax Conventions, and Subpart B, Legislation and Related Committee Reports.

Part III.—Administrative, Procedural, and Miscellaneous.
To the extent practicable, pertinent cross references to these subjects are contained in the other Parts and Subparts. Also included in this part are Bank Secrecy Act Administrative Rulings. Bank Secrecy Act Administrative Rulings are issued by the Department of the Treasury's Office of the Assistant Secretary (Enforcement).

Part IV.—Items of General Interest.
With the exception of the Notice of Proposed Rulemaking and the disbarment and suspension list included in this part, none of these announcements are consolidated in the Cumulative Bulletins.

The first Bulletin for each month includes an index for the matters published during the preceding month. These monthly indexes are cumulated on a quarterly and semiannual basis, and are published in the first Bulletin of the succeeding quarterly and semi-annual period, respectively.

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Part I. Rulings and Decisions Under the Internal Revenue Code of 1986

Section 6302.—Mode or Time of Collection

26 CFR 40.6302(c)–1: Use of Government depositaries.

T.D. 8685

DEPARTMENT OF THE TREASURY Internal Revenue Service

26 CFR Parts 40, 48, 49, 301, 601, and 602

[TD 8685]

RIN 1545–AT25

Deposits of Excise Taxes

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to deposits of excise taxes. These regulations reflect changes to the law made by the Uruguay Round Agreements Act and affect persons required to make deposits of excise taxes. This document also removes obsolete excise tax regulations.

EFFECTIVE DATE: November 12, 1996

FOR FURTHER INFORMATION CONTACT: Ruth Hoffman, (202) 622–3130 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The Uruguay Round Agreements Act of 1994 amended sections 6302(e) and (f) (relating to deposits of excise taxes). As amended, effective January 1, 1995, these provisions require an additional deposit in September of each year of all excise taxes except those imposed by section 4261 or 4271 (relating to air transportation). The taxes imposed by sections 4261 and 4271 are scheduled to expire on December 31, 1996. If those taxes are reinstated, they will be subject to the new deposit provisions beginning on January 1, 1997.

Temporary regulations (T.D. 8616 [1995–2 C.B. 263]) were published in the **Federal Register** on August 29, 1995 (60 FR 44758), along with a notice of proposed rulemaking (PS–8–95 [1995–2 C.B. 506]) cross-referencing the temporary regulations (60 FR 44788). No written comments were received and no public hearing was held. The proposed regulations are adopted as revised by this Treasury decision and the corresponding temporary regulations are removed.

Explanation of Revisions

The temporary regulations provide rules implementing the changes made by the Act in a separate regulations section (§ 40.6302(c)–5T). Instead of finalizing that section, this document incorporates the amendments made by the temporary regulations into the text of §§ 40.6302(c)–1 through 40.6302(c)–4.

To reflect changes in technology, the 14-day rule under § 40.6302(c)–4 is amended to apply to deposits made by electronic funds transfer.

In addition, the rules set forth in §§ 601.104(a)(5) and 601.403(c)(2), relating to persons required to collect and pay over tax, have been combined, revised, and moved to part 49 as § 49.4291–1.

Removal of Obsolete Regulations; Amendments to Table of OMB Control Numbers

This document removes obsolete excise tax regulations under part 601 and obsolete cross-references under part 301. Also removed are obsolete regulations relating to matters now under the jurisdiction of the Bureau of Alcohol, Tobacco, and Firearms (ATF). Generally, regulations pertaining to ATF procedural rules are in 27 CFR parts 70 and 71.

In addition, this document updates various entries in the Table of OMB Numbers contained in part 602.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Ruth Hoffman, Office of Assistant Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and Treasury Department participated in their development.

* * * * *

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 40, 48, 49, 301, 601, and 602 are amended as follows:

PART 40—EXCISE TAX PROCEDURAL REGULATIONS

Paragraph 1. The authority citation for part 40 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 1a. Section 40.6011(a)–1 is amended as follows:

1. Paragraph (c) is amended by adding a sentence to the end of the paragraph.

2. Paragraph (d) is removed.

The addition reads as follows:

§ 40.6011(a)–1 Returns.

* * * * *

(c) * * * For provisions relating to obligations of a person required to collect and pay over facilities and services excise taxes, see § 49.4291–1 of this chapter.

Par. 2. Section 40.6011(a)–2(b)(2) is amended by removing the reference ''§ 40.6302(c)–1(e)(2)'' and adding ''§ 40.6302(c)–1(f)(2)'' in its place.

Par. 3. Section 40.6302(c)–1 is amended as follows:

1. Paragraph (a) is amended by removing the parenthetical ''(relating to taxes imposed on gasoline by section 4081)'' from the last sentence and adding ''(relating to section 4081 taxes)'' in its place.

2. Paragraph (b)(1)(i) is amended by removing the reference ''paragraph (e)'' and adding ''paragraph (f)'' in its place.

3. Paragraph (b)(1)(ii) is removed and paragraph (b)(1)(iii) is redesignated as paragraph (b)(1)(ii).

4. Paragraph (b)(5)(ii) is removed and paragraph (b)(5)(iii) is redesignated as paragraph (b)(5)(ii).

5. Newly designated paragraph (b)(5)(ii) is amended by removing the

reference ''paragraph (e)(3)'' and adding ''paragraph (f)(3)'' in its place.

6. Paragraph (b)(6)(ii) is amended by removing the language ''paragraph (b)(6)(iii) of this section (relating to deposits of gasoline tax for September)'' and adding ''paragraph (e) of this section (relating to deposits of 9-day rule taxes for September)'' in its place.

7. Paragraph (b)(6)(iii) is removed.

8. Paragraphs (c)(2)(i)(A) and (c)(2)(iii)(B) are amended by removing the parenthetical ''(16.67 percent)''.

9. Paragraph (c)(2)(iv) is removed.

10. Paragraph (c)(3)(iii) is removed and paragraph (c)(3)(iv) is redesignated as paragraph (c)(3)(iii).

11. Paragraph (g) is removed.

12. Paragraphs (e) and (f) are redesignated as paragraphs (f) and (g), respectively, and a new paragraph (e) is added.

13. Newly designated paragraph (f)(3)(ii) is amended by removing the reference ''paragraph (e)(3)'' and adding ''paragraph (f)(3)'' in its place.

The addition reads as follows:

§ 40.6302(c)–1 Use of Government depositaries.

* * * * *

(e) *Special rules for September*—(1) *Deposits required*. In the case of deposits of 9-day rule taxes for the second semimonthly period in September, separate deposits are required for the period September 16th-26th and the period September 27th-30th.

(2) *Amount of deposit*. The deposits of 9-day rule taxes for the period September 16th-26th and the period September 27th-30th must be not less than the amount of net tax liability for 9-day rule taxes incurred during the respective periods. The net tax liability incurred during these periods may be computed by—

(i) Determining the amount of net tax liability reasonably expected to be incurred during the second semimonthly period in September;

(ii) Treating 11/15 of that amount as the net tax liability incurred during the period September 16th-26th; and

(iii) Treating the remainder of the amount determined under paragraph (e)(2)(i) of this section (adjusted to reflect net tax liability actually incurred through the end of September) as the net tax liability incurred during the period September 27th-30th.

(3) *Time to deposit*—(i) *In general*. The deposit of 9-day rule taxes required for the period beginning September 16th must be made by September 29. The deposit required for the period ending September 30th must be made at the time prescribed in paragraph (b)(6)(i) of this section for making deposits for the second semimonthly period in September.

(ii) *Due date on Saturday or Sunday*. A deposit that would otherwise be due on September 29 must be made by September 28 if September 29 is a Saturday and by September 30 if September 29 is a Sunday.

(4) *Safe harbor rule based on look-back quarter liability*. The safe harbor rule in paragraph (c)(2)(i) of this section does not apply to 9-day rule taxes for the third calendar quarter unless—

(i) The deposit of 9-day rule taxes for the period September 16th-26th is not less than 11/90 of the net tax liability reported for 9-day rule taxes for the look-back quarter; and

(ii) The total deposit of 9-day rule taxes for the second semimonthly period in September is not less than 1/6 of the net tax liability reported for 9-day rule taxes for the look-back quarter.

(5) *Safe harbor rule based on current liability*. The safe harbor rule of paragraph (c)(3)(i) of this section does not apply to 9-day rule taxes for the third calendar quarter unless—

(i) The deposit of 9-day rule taxes for the period September 16th-26th is not less than 69.67 percent of the net tax liability for 9-day rule taxes for the second semimonthly period in September; and

(ii) The total deposit of 9-day rule taxes for the second semimonthly period in September is not less than 95 percent of the net tax liability for 9-day rule taxes for that semimonthly period.

(6) *Persons not required to use electronic funds transfer*. In the case of a person that is not required to deposit excise taxes by electronic funds transfer (a non-EFT depositor), the rules of this paragraph (e) apply with the following modifications:

(i) The periods for which separate deposits must be made are September 16th-25th and September 26th-30th.

(ii) The deposit required for the period beginning September 16th must be made by September 28. A deposit that would otherwise be due on September 28 must be made by September 27 if September 28 is a Saturday and by September 29 if September 28 is a Sunday.

(iii) The generally applicable fractions and percentage are modified to reflect the different deposit periods in accordance with the following table:

Generally applicable fractions and percentage	Modifications for non-EFT depositors
11/15	10/15
11/90	10/90
69.67 percent	63.33 percent

(7) *Effective date*. This paragraph (e) is effective August 1, 1995, for all 9-day rule taxes except those imposed by section 4261 or 4271. For taxes imposed by section 4261 or 4271, this paragraph (e) applies beginning January 1, 1997.

* * * * *

Par. 4. Section 40.6302(c)–2 is amended as follows:

1. Paragraphs (b)(2)(i)(A) and (b)(2)(ii)(B) are amended by removing the parenthetical ''(16.67 percent)''.

2. Paragraph (c) is revised.

The revision reads as follows:

§ 40.6302(c)–2 Special rules for use of Government depositaries under section 4681.

* * * * *

(c) *Special rules for September*—(1) *Deposits required*. In the case of deposits of 30-day rule taxes for the first semimonthly period in September, separate deposits are required for the period September 1st-11th and the period September 12th-15th.

(2) *Amount of deposit*. The deposits of 30-day rule taxes for the period September 1st-11th and the period September 12th-15th must be not less than the amount of net tax liability for 30-day rule taxes incurred during the respective periods. The net tax liability incurred during these periods may be computed by—

(i) Determining the amount of net tax liability incurred during the first semimonthly period in September (or, if semimonthly liability is computed by dividing monthly liability by two, the amount reasonably expected to be incurred);

(ii) Treating 11/15 of that amount as the net tax liability incurred during the period September 1st-11th; and

(iii) Treating the remainder of the amount determined under paragraph (c)(2)(i) of this section (adjusted, if that amount is based on reasonable expectations, to reflect net tax liability actually incurred through the end of September) as the net tax liability incurred during the period September 12th-15th.

(3) *Time to deposit*—(i) *In general*. The deposit required for the period beginning September 1st and the deposit for the second semimonthly period in August must be made by September 29. The deposit required for the period ending September 15th must be made at the time prescribed in paragraph (b)(1)(i) of this section for making deposits for the first semimonthly period in September.

(ii) *Due date on Saturday or Sunday*. A deposit that would otherwise be due on September 29 must be made by September 28 if September 29 is a Saturday and by September 30 if September 29 is a Sunday.

(4) *Safe harbor rule based on look-back quarter liability*. The safe harbor rule of paragraph (b)(2)(i) of this section does not apply for the third calendar quarter unless—

(i) The deposit of 30-day rule taxes for the period September 1st-11th is not less than 11/90 of the net tax liability reported for 30-day rule taxes for the look-back quarter; and

(ii) The total deposit of 30-day rule taxes for the first semimonthly period in September is not less than 1/6 of the net tax liability reported for 30-day rule taxes for the look-back quarter.

(5) *Safe harbor rule based on current liability*. The safe harbor rule of paragraph (b)(3) of this section does not apply for the third calendar quarter unless—

(i) The deposit of 30-day rule taxes for the period September 1st-11th is not less than 69.67 percent of the net tax liability for 30-day rule taxes for the first semimonthly period in September; and

(ii) The total deposit of 30-day rule taxes for the first semimonthly period in September is not less than 95 percent of the net tax liability for 30-day rule taxes for that semimonthly period.

(6) *Persons not required to use electronic funds transfer*. In the case of a person that is not required to deposit excise taxes by electronic funds transfer (a non-EFT depositor), the rules of this paragraph (c) apply with the following modifications:

(i) The periods for which separate deposits must be made are September 1st-10th and September 11th-15th.

(ii) The deposit required for the period beginning September 1st and the deposit required for the second semimonthly period in August must be made by September 28. A deposit that would otherwise be due on September 28 must be made by September 27 if September 28 is a Saturday and by September 29 if September 28 is a Sunday.

(iii) The generally applicable fractions and percentage are modified to reflect the different deposit periods in accordance with the following table:

Generally applicable fractions and percentage	Modifications for non-EFT depositors
11/15	10/15
11/90	10/90
69.67 percent	63.33 percent

(7) *Effective date*. This paragraph (c) is effective August 1, 1995.

Par. 5. Section 40.6302(c)–3 is amended as follows:

1. In paragraph (b)(1)(ii), first sentence, the language ''deposits to'' is removed and ''deposits of'' is added in its place.

2. In paragraph (b)(3), first sentence, the language ''durina'' is removed and ''during a'' is added in its place.

3. Paragraphs (f) and (g) are redesignated as paragraphs (g) and (h), respectively, and a new paragraph (f) is added.

4. In newly designated paragraph (h), first sentence, the language ''This section'' is removed and ''Except as otherwise provided, this section'' is added in its place.

The addition reads as follows:

§ 40.6302(c)–3 Special rules for use of Government depositaries under chapter 33.

* * * * *

(f) *Special rules for September*—(1) *Deposits required*. In the case of alternative method taxes charged (that is, included in amounts billed or tickets sold) during the first semimonthly period in September, separate deposits are required for the taxes charged during the period September 1st-11th and the period September 12th-15th.

(2) *Time to deposit*—(i) *In general*. The deposit required for alternative method taxes charged during the period beginning September 1st must be made by September 29. The deposit required for alternative method taxes charged during the period ending September 15th must be made at the time prescribed in paragraph (c) of this section for making deposits for the first semimonthly period in October.

(ii) *Due date on Saturday or Sunday*. A deposit that would otherwise be due on September 29 must be made by September 28 if September 29 is a Saturday and by September 30 if September 29 is a Sunday.

(3) *Amount of deposit*. The deposits of alternative method taxes required for the period September 1st-11th and the period September 12th-15th must be not less than the amount of alternative method taxes charged during the respective periods. The amount of alternative method taxes charged during these periods may be computed by—

(i) Determining the net amount of alternative method taxes reflected in the separate account for the first semimonthly period in September (or one-half of the net amount of alternative method taxes reasonably expected to be reflected in the separate account for the month of September);

(ii) Treating 11/15 of that amount as the amount of taxes charged during the period September 1st-11th; and

(iii) Treating the remainder of the amount determined under paragraph (f)(3)(i) of this section (adjusted, if that amount is based on reasonable expectations, to reflect actual taxes charged through the end of September) as the amount charged during the period September 12th-15th.

(4) *Safe harbor rule based on look-back quarter liability*. The safe harbor rule of § 40.6302(c)–1(c)(2)(i) does not apply for the fourth calendar quarter unless—

(i) The deposit for alternative method taxes charged during the period September 1st-11th is not less than 11/90 of the net tax liability reported for alternative method taxes for the look-back quarter; and

(ii) The total deposit for alternative method taxes charged during the first semimonthly period in September is not less than 1/6 of the net tax liability reported for alternative method taxes for the look-back quarter.

(5) *Safe harbor rule based on current liability*. The safe harbor rule of § 40.6302(c)–1(c)(3)(i) does not apply for the fourth calendar quarter unless—

(i) The deposit for alternative method taxes charged during the period September 1st-11th is not less than 69.67 percent of the alternative method taxes charged during the first semimonthly period in September; and

(ii) The total deposit for alternative method taxes charged during the first semimonthly period in September is not less than 95 percent of the alternative method taxes charged during that semimonthly period.

(6) *Persons not required to use electronic funds transfer*. In the case of a person that is not required to deposit excise taxes by electronic funds transfer (a non-EFT depositor), the rules of this paragraph (f) apply with the following modifications:

(i) The taxes for which separate deposits must be made are the taxes charged during the periods September 1st-10th and September 11th-15th.

(ii) The deposit required for taxes charged during the period beginning September 1st must be made by September 28. A deposit that would otherwise be due on September 28 must be made by September 27 if September 28 is a Saturday and by September 29 if September 28 is a Sunday.

(iii) The generally applicable fractions and percentage are modified to reflect the different deposit periods in accordance with the following table:

Generally applicable fractions and percentage	Modifications for non-EFT depositors
11/15	10/15
11/90	10/90
69.67 percent	63.33 percent

(7) *Effective date*. This paragraph (f) is effective August 1, 1995, for all taxes except those imposed by section 4261 or 4271. For taxes imposed by section 4261 or 4271, this paragraph (f) applies beginning January 1, 1997.

* * * * *

Par. 6. Section 40.6302(c)–4 is amended as follows:

1. Paragraph (a) is amended by revising the first sentence and removing the second sentence.

2. Paragraph (b)(1) is amended by removing the language ''transfer between accounts with the same Government depositary'' in the first sentence and adding ''electronic funds transfer'' in its place.

3. Paragraph (d) is redesignated as paragraph (e) and a new paragraph (d) is added.

4. Newly designated paragraph (e) is amended by removing the language ''Highway Act'' and adding ''Highway Revenue Act'' in its place.

The revision and addition read as follows:

§ 40.6302(c)–4 Special rule for use of Government depositaries under section 4081.

(a) *Overview*. This section sets forth a special rule for deposits of taxes imposed by section 4081. * * *

* * * * *

(d) *Special rules for September*. Deposits of 14-day rule taxes for the second semimonthly period in September must be made in the manner prescribed by § 40.6302(c)–1(e) applied with the following modifications:

(1) Each reference to 9-day rule taxes is treated, instead, as a reference to 14-day rule taxes.

(2) The deposit required for the period ending September 30th must be made at the time prescribed in paragraph (b) of this section (rather than at the time prescribed in § 40.6302(c)–1(b)(6)(i)).

* * * * *

§ 40.6302(c)–5T [Removed]

Par. 7. Section 40.6302(c)–5T is removed.

§ 40.9999–1 [Amended]

Par. 8. Section 40.9999–1 is amended as follows:

1. *Example 1*(iii) is amended by removing the parenthetical ''(§ 40.6302(c)–1(e)(2))'' and adding ''(§ 40.6302(c)–1(f)(2))'' in its place.

2. *Example 3* is amended by:

a. Removing the language ''diesel fuel'' and adding ''aviation fuel'' in its place in the following locations:

i. *Example 3*, heading.

ii. *Example 3*(i)(1), each time it appears in the first sentence.

iii. *Example 3*(i)(1), second and third sentences.

iv. *Example 3*(i)(4), second sentence.

v. *Example 3*(ii), fourth and seventh sentences.

vi. *Example 3*(iii), third sentence.

vii. *Example 3*(iv), second sentence.

b. In *Example 3*(iii), second sentence, removing the parenthetical ''(§ 40.6302(c)–1(e)(3))'' and adding ''(§ 40.6302(c)–1(f)(3))'' in its place.

PART 48—MANUFACTURERS AND RETAILERS EXCISE TAXES

Par. 9. The authority citation for part 48 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

§ 48.4082–2 [Amended]

Par. 9a. In § 48.4082–2, paragraph (a) is amended by removing the reference ''section 6714'' and adding ''section 6715'' in its place.

§ 48.4083–1 [Amended]

Par. 10. Section 48.4083–1 is amended as follows:

1. In paragraph (b)(1) introductory text, first sentence, the reference ''section 6714(a)'' is removed and ''section 6715(a)'' is added in its place.

2. In paragraph (d)(1), second sentence, the reference ''section 6714'' is removed and ''section 6715'' is added in its place.

§ 48.6427–7 [Removed]

Par. 11. Section 48.6427–7 is removed.

§ 48.6714–1 [Redesignated as 48.6715–1]

Par. 12. Section 48.6714–1 is redesignated as § 48.6715–1.

Par. 13. In newly designated § 48.6715–1, the first and second sentences of paragraph (a) introductory text are amended by removing the reference ''section 6714(a)'' and adding ''section 6715(a)'' in its place.

PART 49—FACILITIES AND SERVICES EXCISE TAXES

Par. 14. The authority citation for part 49 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 14a. Subpart F, consisting of § 49.4291–1, is added to read as follows:

Subpart F—Collection of Tax By Persons Receiving Payment

§ 49.4291–1 Persons receiving payment must collect tax.

Except as otherwise provided in section 4263(a), every person receiving any payment for facilities or services on which a tax is imposed upon the payor thereof under chapter 33 shall collect the amount of the tax from the person making that payment. Under section 7501, all taxes collected in this manner are held by the collecting agent in trust for the United States. If the person from whom the tax is required to be collected refuses to pay it or if for any reason it is impossible for the collecting agent to collect the tax from that person, the collecting agent is required to report to the district director the name and address of that person, the nature of the facility provided or service rendered, the amount paid therefor, and the date on which paid. Upon receipt of this information the district director will proceed

against the person to whom the facilities were provided or the services rendered to assert the amount of tax due, affording that person the same district conference, protest, and appellate rights as are available to other excise taxpayers. In addition, when a field or office audit of a collecting agent's records, or of a taxpayer's records, discloses that the collecting agent failed during prior reporting periods to collect taxes due, the district director may assert those taxes directly against the person to whom the facilities were provided or the services rendered, whether or not the collecting agent had attempted collection or the person liable for the tax had refused payment thereof.

PART 301—PROCEDURE AND ADMINISTRATION

Par. 15. The authority citation for part 301 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

§ 301.6156–1 [Removed]

Par. 15a. Section 301.6156–1 is removed.

§ 301.6206–1 [Removed]

Par. 16. Section 301.6206–1 is removed.

§§ 301.6415–1 through 301.6421–1 and 301.6423–1 [Removed]

Par. 17. Sections 301.6415–1 through 301.6421–1 and 301.6423–1 are removed.

§ 301.6675–1 [Removed]

Par. 18. Section 301.6675–1 is removed.

Par. 19. The undesignated center heading following § 301.6905–1 is revised to read as follows:

Licensing

Par. 20. The undesignated center heading preceding § 301.7001–1 is removed.

Par. 21. The undesignated center heading preceding § 301.7011–1 is removed.

§ 301.7011–1 [Removed]

Par. 22. Section 301.7011–1 is removed.

§ 301.7232–1 [Removed]

Par. 23. Section 301.7232–1 is removed.

§ 301.7328–1 [Removed]

Par. 24. Section 301.7328–1 is removed.

PART 601—STATEMENT OF PROCEDURAL RULES

Par. 25. The authority citation for part 601 continues to read as follows:

Authority: 5 U.S.C. 301 and 552.

§ 601.101 [Amended]

Par. 25a. Section 601.101 is amended as follows:

1. Paragraph (b) is amended by removing the seventh sentence and the last sentence.

2. Paragraph (c) is removed.

Par. 26. Section 601.102 is amended as follows:

1. Paragraphs (b)(2)(i) and (b)(2)(ii) are revised.

2. Paragraphs (b)(2)(iii), (b)(2)(iv), and (c) are removed.

The revisions read as follows:

§ 601.102 Classification of taxes collected by the Internal Revenue Service.

* * * * *

(b) * * *

(2) * * *

(i) Employment taxes.

(ii) Miscellaneous excise taxes collected by return.

* * * * *

§ 601.104 [Amended]

Par. 27. Section 601.104 is amended as follows:

1. Paragraphs (a)(4) and (a)(5) are removed.

2. Paragraph (c)(4) is amended by removing the eighth and ninth sentences.

§ 601.201 [Amended]

Par. 28. In § 601.201, paragraph (a)(2) is amended by removing the last sentence.

§ 601.202 [Amended]

Par. 29. In § 601.202, paragraph (c)(1) is amended by removing the parenthetical ''(other than the manufacturers excise tax on firearms arising from application of sections 4181 and 4182 of the Internal Revenue Code of 1954)''.

§ 601.203 [Amended]

Par. 30. In § 601.203, paragraph (a)(1) is amended by removing the last sentence.

Subpart C [Removed and Reserved]

Par. 31. Subpart C of part 601 is removed and reserved.

Par. 32. The heading for subpart D of part 601 is revised to read as follows:

Subpart D—Provisions Special to Certain Employment Taxes §§ 601.402 through 601.405 [Removed]

Par. 33. Sections 601.402 through 601.405 are removed.

Subpart J [Removed]

Par. 34. Subpart J of part 601 is removed.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 35. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 35a. In § 602.101, paragraph (c) is amended by:

1. Removing the following entries from the table:

§ 602.101 OMB Control numbers.

* * * * *

(c) * * *

CFR part or section where identified and described	Current OMB control No.
* * * * *	
48.0–3	1545–0685
* * * * *	
48.4102–1	1545–0023
	1545–0725
* * * * *	
48.4221–8	1545–0023
48.4221–9	1545–0023
* * * * *	
48.6427–7	1545–0143
	1545–0162
* * * * *	
48.6675–1	1545–0723
* * * * *	
301.7011–1	1545–0123
* * * * *	
601.104	1545–0023
	1545–0233
* * * * *	
601.201	1545–0819
* * * * *	
601.402	1545–0014
601.403	1545–0023
* * * * *	

2. Adding entries in numerical order to the table to read as follows:

§ 602.101 OMB Control numbers.

* * * * *

(c) * * *

CFR part or section where identified and described	Current OMB control No.
* * * * *	
601.104	1545–0233
* * * * *	

CFR part or section where identified and described	Current OMB control No.
601.201	1545–0019 1545–0819
* * * * *	
601.401	1545–0257
601.504	1545–0150
* * * * *	

Approved June 26, 1996.

Margaret Milner Richardson,
Commissioner of Internal Revenue.

Donald C. Lubick,
Acting Assistant Secretary of the Treasury.

(Filed by the Office of the Federal Register on November 8, 1996, 8:45 a.m., and published in the issue of the Federal Register for November 12, 1996, 61 F.R. 58004)

Part III. Administrative, Procedural, and Miscellaneous

Weighted Average Interest Rate Update

Notice 96–59

Notice 88–73 provides guidelines for determining the weighted average interest rate and the resulting permissible range of interest rates used to calculate current liability for the purpose of the full funding limitation of § 412(c)(7) of the Internal Revenue Code as amended by the Omnibus Budget Reconciliation Act of 1987 and as further amended by the Uruguay Round Agreements Act, Pub. L. 103–465 (GATT).

The average yield on the 30-year Treasury Constant Maturities for October 1996 is 6.81 percent.

The following rates were determined for the plan years beginning in the month shown below.

Month	Year	Weighted Average	90% to 108% Permissible Range	90% to 110% Permissible Range
November	1996	6.91	6.22 to 7.46	6.22 to 7.60

Drafting Information

The principal author of this notice is Donna Prestia of the Employee Plans Division. For further information regarding this notice, call (202) 622–6076 between 2:30 and 4:00 p.m. Eastern time (not a toll-free number). Ms. Prestia's number is (202) 622–7377 (also not a toll-free number).

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26 CFR 301.6109–1: Guidance for qualification as an acceptance agent, and execution of an agreement between an acceptance agent and the Internal Revenue Service relating to the issuance of certain taxpayer identifying numbers.

Rev. Proc. 96–52

CONTENTS

SECTION 1. PURPOSE

This revenue procedure describes the application procedures for becoming an acceptance agent and the requisite agreement that an acceptance agent must execute with the Internal Revenue Service (IRS). Persons may wish to become an acceptance agent for purposes of facilitating the issuance of (1) IRS individual taxpayer identification numbers (ITINs) to alien individuals who are ineligible to obtain social security numbers (SSNs), or (2) employer identification numbers (EINs) to foreign persons.

SECTION 2. BACKGROUND

Section 301.6109–1(d)(3) of the Income Tax Regulations (Regulations) provides general procedures for obtaining an ITIN which require the submission of an application form (Form W–7), together with documentation considered as evidence of the alien individual's identity and alien status. Section 301.6109–1(d)(2) of the Regulations provides general procedures for obtaining an EIN which require the submission of an application form (Form SS–4), together with any supplementary statement as may be required. The regulations require an applicant for an ITIN or an EIN to furnish the information required by the form, the accompanying instructions, and any applicable regulations. An applicant may either submit the application form for an ITIN or an EIN directly to the IRS or, as provided in § 301.6109–1(d)(3)(iv) of the Regulations, apply for an ITIN or an EIN by using an acceptance agent.

SECTION 3. DEFINITIONS

For purposes of this revenue procedure, the terms listed below are defined as follows.

.01 An *acceptance agent* is a person (i.e., an individual or an entity) who, pursuant to a written agreement with the IRS, is authorized to assist alien individuals and other foreign persons in obtaining ITINs or EINs from the IRS. An acceptance agent acting in its capacity as an acceptance agent does not act as an agent of the IRS, nor is it authorized to hold itself out as an agent of the IRS.

.02 An *alien individual* is an individual who is not a citizen or a national of the United States.

.03 A *foreign person* is a nonresident alien individual, a foreign corporation, a foreign partnership, a foreign trust, a foreign estate, or any other person that is not a U.S. person, the U.S. government, or a U.S. state or the District of Columbia.

.04 *Alien status* refers to an individual's status as a non- U.S. citizen or non-U.S. national.

.05 *Identity* refers to the fact of being the same individual as is represented, claimed, or described.

.06 *TIN* (taxpayer identifying number) refers to both ITINs and EINs.

SECTION 4. ACCEPTANCE AGENT

.01 *Role of acceptance agent.* (1) *In general.* The role of an acceptance agent is to facilitate the application process and the issuance of TINs to alien individuals and foreign persons. An acceptance agent performs this duty by forwarding the completed Form W–7 (together with the required documentary evidence) to the IRS, Philadelphia Service Center to obtain ITINs, or by forwarding the completed Form SS–4 (together with any supplementary statement if required) to the IRS, Philadelphia Service Center to obtain EINs, or by calling Tele–TIN: (215) 574– 2400 to obtain EINs.

(2) *Certifying acceptance agent.* In the case of obtaining an ITIN, if permitted under the agreement with the IRS, a person may assume greater responsibility as a certifying acceptance agent. In that case, the acceptance agent may review the documentation required to accompany Form W–7 and certify to the IRS that it has reviewed the required documentation and to the best of its knowledge and belief, the documentation is authentic, complete, and accurate. See section 6 of this revenue procedure for further information.

.02 *Application process for acceptance agent.* (1) *Eligible persons.* Persons eligible to become acceptance agents include, but are not limited to, a financial institution defined in section 265(b)(5) of the Internal Revenue Code (Code) or § 1.165–12(c)(1)(v) of the Regulations, a college or university that is an educational organization defined in § 1.501(c)(3)– 1(d)(3)(i) of the Regulations, a federal agency defined in section 6402(f) of the Code, and persons that provide professional assistance to taxpayers in the preparation of their tax returns. An eligible person may be a U.S. or a foreign person.

(2) *Pre-application conference.* Prior to submitting a formal application, a person interested in becoming an acceptance agent may request a conference with the IRS, which may be held in person or by telephone, to explore informally the benefits and burdens associated with the role of an acceptance agent. Requests for pre-application conferences should be directed to the Assistant Commissioner (International), Foreign Payments Division (telephone: (202) 874–1800, not a toll-free number).

(3) *Written application.* (a) Where to apply. A person may apply to become an acceptance agent by submitting a written request to:

Assistant Commissioner
(International)
Foreign Payments Division CP:IN:-OO:WT
950 L'Enfant Plaza South, SW
Washington, DC 20024
FAX: (202) 874–1984

(b) Content of application. The application shall indicate that the person is requesting permission to execute an agreement with the IRS pursuant to § 301.6109–1(d)(3)(iv) of the Regulations, and in accordance with this revenue procedure. The application shall include the information listed below.

(i) The applicant's complete name, address, and EIN. If the applicant does not have an EIN, a completed Form SS–4 must be included to obtain such number.

(ii) The reason that the applicant wishes to become an acceptance agent, and the type of responsibilities the applicant expects to assume.

(iii) A description of the applicant, including the entity status of the applicant (e.g., bank, university, governmental agency, etc.) and the state (or if outside the United States, the country) under whose laws the applicant is created or organized.

(iv) A list of the applicant's employees who will be responsible parties for performance under the acceptance agent agreement, including their title and position description.

(v) A list of the offices or branches, if any, intended to be covered by the agreement and their location, including mailing address.

(vi) The business relationship the applicant has with the persons whom it expects to assist in obtaining TINs.

(vii) An estimate of the number of Forms W–7 and/or Forms SS–4 it expects to submit to the IRS per year.

(viii) The name and telephone number of a person the IRS can contact regarding the application.

(4) *IRS review of application.* (a) Request for additional information. Upon review of the application, the IRS may request additional information.

(b) Determination and notification of status. Upon completion of review of the application, including any additional information submitted, the IRS will determine whether the applicant qualifies to become an acceptance agent and will notify the applicant of this determination. If the applicant is approved as an acceptance agent, the IRS will provide instructions to the applicant regarding the procedures for entering into the acceptance agent agreement with the IRS.

SECTION 5. ACCEPTANCE AGENT AGREEMENT

.01 *In general.* An acceptance agent agreement described under § 301.6109–1(d)(3)(iv)(A) of the Regulations is an agreement between the IRS and a person authorized by virtue of the agreement to act as an acceptance agent on behalf of an alien individual or a foreign person with respect to that individual's or person's need to obtain an ITIN or an EIN from the IRS. The Assistant Commissioner (International) shall sign the agreement on behalf of the IRS. If the acceptance agent is a person other than an individual, the agreement must be signed by an authorized representative of the acceptance agent.

.02 *Terms and procedures.* The terms of an acceptance agent agreement may vary depending upon such factors as the nature of the applicant (e.g., bank, university, governmental agency, etc.) and its location (i.e., inside the United States or outside the United States). The acceptance agent agreement will generally contain the following terms and conditions necessary to insure proper administration of the process by which the IRS issues TINs to alien individuals and foreign persons.

(1) *Procedures for providing TIN application forms.* An acceptance agent shall agree to maintain a supply of Form W–7 for obtaining ITINs, and of Form SS–4 for obtaining EINs from the IRS. The acceptance agent may use a substitute form that is approved by the IRS. For example, if the acceptance agent is a financial institution, the Form W–7 or Form SS–4 may be incorporated as part of an account opening package. In addition, an acceptance agent shall agree to send a Form W–7 to any individual client or customer (who is not a U.S. citizen or national) that it knows, or has reason to know, has been issued a temporary tax identification number by the IRS, and to advise the client or customer of the need to replace the temporary tax identification number with an ITIN.

(2) *Procedures for assisting in completion of TIN application forms.* An acceptance agent shall agree to assist in the preparation of the TIN application form. For example, the acceptance agent should make certain that every item included on the application form has been completed and should assist the TIN applicant in understanding the information required by the application form. The acceptance agent should contact the IRS for assistance regarding any questions about the forms, application process, the requirement to have TINs, etc. that it cannot reasonably answer. Questions regarding such matters should be directed to the IRS at (215) 516–ITIN (4846) (not a toll-free number).

(3) *Procedures for IRS communication with acceptance agent.* The applicant's signature on the Form W–7 provides the power of attorney to the acceptance agent, authorizing communication with the IRS regarding that particular application only. The acceptance agent may act as an agent for the applicant regarding any additional communication necessary with the IRS in connection with the application form. However, IRS communication with an acceptance agent in connection with a Form SS–4 application requires that the applicant has furnished a power of attorney (e.g., Form 2848) authorizing such communication.

(4) *Procedures for submitting TIN application forms.* An acceptance agent shall agree to submit promptly the TIN application forms or approved substitute

forms (together with the required documentation for ITINs or the supplementary statement, if required, for EINs) to the IRS at the mailing address for the Philadelphia Service Center included on Form W–7 or Form SS–4, or the following street address (for registered or certified mail): 11601 Roosevelt Blvd., D.P. 426, Philadelphia, PA 19255.

(5) *Procedures for collecting and reviewing required documentation for assignment of an ITIN*. A Form W–7 must be accompanied by documentary evidence of alien status and identity. The types of acceptable documentary evidence may vary depending upon such factors as the ITIN applicant's country of citizenship or nationality, the ITIN applicant's residency at the time of the application (i.e., inside or outside the United States), etc. The acceptance agent must review the applicant's documentation in order to determine whether the documentation is of a type which the IRS regards as reliable evidence of alien status and identity. The acceptance agent agreement will specify the various types of documentary evidence that the acceptance agent should accept for submission with Form W–7. Examples of documentary evidence supporting alien status (i.e., non-U.S. citizenship or nationality) include a foreign passport, a foreign birth record, or a current document issued by the Immigration and Naturalization Service (INS) in accordance with that agency's regulations. Examples of documentary evidence supporting identity include a driver's license, identity card, school record, medical record, marriage record, voter registration card, military registration card, passport, or a current document issued by INS in accordance with that agency's regulations. Generally, one piece of documentary evidence should contain a picture or photo identification. Generally, ITIN applicants must submit the required documentation during a personal interview with the acceptance agent. The agreement will generally require that original (or certified copies of original) documentation be submitted to the IRS with Form W–7. All original documents will be returned promptly to the acceptance agent (i.e., no later than 3 business days from receipt of a complete application by the IRS, Philadelphia Service Center). Copies of original documents, if allowed to be submitted under the acceptance agent agreement, will not be returned to the acceptance agent.

(6) *Procedures for assisting taxpayers with notification procedures in the event of a change of alien status*. When an acceptance agent knows that an individual assigned an ITIN has become eligible to obtain (or has, in fact, obtained) a SSN, such acceptance agent shall agree to inform the individual of the obligation to (1) apply for a SSN, (2) stop using the previously- assigned ITIN upon receipt of the new SSN, and (3) notify the IRS of this change in alien status. The acceptance agent's duty with respect to this matter shall apply only to the situation where the acceptance agent has a continuing business relationship with the individual. An alien individual may become eligible to obtain a SSN if, for example, such individual has become a U.S. citizen or a permanent U.S. resident (i.e., ''green card'' holder), or is lawfully permitted by INS to work in the United States. The ITIN holder's notification to the IRS should state that the individual either is eligible to have or has a SSN, and should include the individual's name, address, previously-assigned ITIN and new SSN (if available), the current date, and the individual's signature. This information may be provided to the IRS by FAX: (215) 516–3270 or by mail: IRS, Philadelphia Service Center, ATTN: ITIN Unit-D.P. 426, P.O. Box 447, Bensalem, PA 19020. Questions regarding this matter should be directed to (215) 516–ITIN (4846) (not a toll-free number).

(7) *Procedures for IRS verification of compliance with acceptance agent agreement*. The acceptance agent agreement will specify the procedures by which the IRS will verify the acceptance agent's compliance with the agreement. In particular, the procedures must enable the IRS to verify that the acceptance agent has adequate procedures in effect to assist applicants properly. The procedures also must enable the IRS to verify that the acceptance agent is complying with any record retention requirements relating to the issuance of TINs. Verification of compliance with the acceptance agent agreement does not constitute an examination of the books and records of the acceptance agent.

(8) *Procedures regarding termination of acceptance agent agreement*. An acceptance agent agreement generally is not subject to expiration and renewal. Either the acceptance agent or the IRS may terminate an agreement 30 days after delivery of notice of termination to the other party. The decision to terminate is solely at the discretion of the party giving such notice. However, the IRS generally will not give notice of termination unless the acceptance agent willfully fails to comply with procedures required by the agreement or to perform any duty or obligation required in the agreement (including failing to exercise due diligence under the agreement) and such failure constitutes material noncompliance. In addition, the IRS may give notice of termination where the acceptance agent has misrepresented material information given on its application to become an acceptance agent or on a TIN application. Further, notice of termination may be given where the acceptance agent accepts a TIN application with knowledge that material information on the form is false. The acceptance agent may request that the IRS reinstate the acceptance agent agreement by submitting, within 30 days of receipt of the notice of termination, a written explanation of how the acceptance agent proposes to correct the violation and, if appropriate, to modify its procedures to ensure that such violation will not occur in the future. The IRS shall accept or reject the request, or make a counterproposal within 20 days of receipt of the request.

SECTION 6. CERTIFYING ACCEPTANCE AGENT

.01 *General requirements*. A certifying acceptance agent is a person that is authorized under the agreement with the IRS to submit a Form W–7 to the IRS on behalf of an applicant, without having to furnish supporting documentary evidence. Instead, when submitting a Form W–7 to the IRS, a certifying acceptance agent certifies to the IRS that it has reviewed the appropriate documentation evidencing the ITIN applicant's identity and alien status, and that it is maintaining a record of such documentation. In addition, the acceptance agent must certify that to the best of its knowledge and belief, the documentation is authentic, complete, and accurate. As part of the certification, the acceptance agent must describe the documentation upon which it is relying. The certification is not binding on the IRS, which may, in appropriate cases, request to see appropriate documentation before issuing an ITIN.

.02 *Application process*. (1) *Written application*. IRS permission to act as a certifying acceptance agent is conditioned upon the acceptance agent's

agreeing to verify documentation supporting the identity and alien status of an ITIN applicant, maintain certain records, and submit certain information to the IRS upon request. As a result, in addition to the information required to be submitted with an application to become an acceptance agent as outlined in section 4.02(3) of this revenue procedure, an applicant to become a certifying acceptance agent must also provide the following information:

(a) If an applicant relies on local know-your-customer practices and procedures for identifying customers or clients, and communicating with customers or clients, then the applicant must provide an explanation of those practices and procedures, including (1) the extent to which they are mandated and verified under local law and regulations applicable at each location intended to be covered by the agreement and (2) the penalties or sanctions that may apply under local law in the event of a failure to comply with such procedures. Supporting documentation must be included.

(b) Information regarding the anticipated reason why customers or clients need to apply for ITINs (e.g., nonresident alien ineligible for SSN, resident alien ineligible for SSN, or U.S. person's dependent ineligible for SSN).

(2) *Pre-application conference*. Prior to submitting a formal application, a person interested in becoming a certifying acceptance agent may request a conference with the IRS, which may be held in person or by telephone. This conference will provide an opportunity to address such matters as the scope of the agreement, corresponding obligations that would arise under the agreement for the applicant, and the nature of documentation, record maintenance, and verification procedures that would arise under the agreement. Requests for pre-application conferences should be directed to the Assistant Commissioner (International), Foreign Payments Division (telephone: (202) 874–1800, not a toll-free number).

.03 *Agreement*. The terms of a certifying acceptance agent agreement may vary from case to case depending upon such factors as local laws and practices, know-your-customer procedures, supervisory controls, and the types of internal controls and recordkeeping procedures in effect in the normal course of business of the certifying acceptance agent. Generally, the acceptance agent agreement will contain the terms and conditions necessary to insure proper administration of the process by which the IRS issues ITINs to alien individuals as are described in section 5.02 of this revenue procedure. The following terms are in addition to those outlined in section 5 above.

(1) *Procedures for collecting, reviewing, and maintaining a record of required documentation for assignment of an ITIN*. A certifying acceptance agent agreement will describe the procedures by which the acceptance agent will verify the identity and alien status of ITIN applicants and submit a certification to the IRS. To the extent possible, procedures already in place to identify persons for local regulatory purposes or as part of normal course of business will be used to support the representations made by the acceptance agent regarding these matters. To the extent applicable, an acceptance agent may use documentation evidencing citizenship, nationality, residency, or immigration status to support its determination of the alien status of ITIN applicants. The reliability of any documentation should be evaluated by the acceptance agent on the basis of the type of information stated on the document, the source document, if any, used to substantiate the information on the document, the issuance procedures used, and the ease with which the document can be counterfeited. Where the IRS determines that these requirements or practices are not sufficient, it may require that additional procedures and documentation be established.

The acceptance agent will agree that, for purposes of determining its compliance with the acceptance agent agreement, it will maintain a record of the documentation obtained and reviewed pursuant to the obligations set forth in the agreement. If the acceptance agent has a professional or business relationship with the ITIN applicant, the documentation with respect to the ITIN applicant shall be maintained for as long as the ITIN applicant maintains such a relationship with the acceptance agent and for a reasonable period, as prescribed by the IRS in the agreement, from the date such relationship ceases. If the acceptance agent does not have a professional or business relationship with the ITIN applicant, the documentation with respect to the ITIN applicant shall be maintained for three years after presentation.

(2) *Procedures for IRS compliance checks of certifications*. A certifying acceptance agent must also agree to furnish supporting documentary evidence to the IRS upon written request in such manner as the IRS and the acceptance agent will establish. In order to conduct periodic compliance checks, the IRS may rely on sampling techniques and/or verification (by random selection) with ITIN recipients to assure reliability of the acceptance agent's certifications while ensuring the least amount of disruption and burden to the acceptance agent. The acceptance agent agreement will specify the manner in which IRS compliance checks will take place (i.e., either on site or through correspondence). Where the acceptance agent resides outside of the United States, in appropriate cases, assistance may be obtained from the tax authorities of the country where the acceptance agent resides.

SECTION 7. EFFECTIVE DATE

This revenue procedure is effective on the date of publication.

SECTION 8. PAPERWORK REDUCTION ACT

The collections of information contained in this revenue procedure have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545–1499.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

The collections of information contained in this revenue procedure are in section 4.02(3), section 5.02(6), and section 6.02(1). This information is required to assist the IRS in issuing TINs to certain alien individuals and foreign persons. In addition, this information will be used to enable the IRS to determine whether persons qualify as acceptance agents. The collection of information is required to obtain an acceptance agent agreement. The likely respondents are state or local governments, business or other for-profit institutions, federal agencies, and nonprofit institutions.

The estimated total annual reporting/recordkeeping burden is 41,006 hours.

The estimated average annual burden per respondent/recordkeeper is 3 hours, 12 minutes. The estimated number of respondents/recordkeepers is 12,825.

The estimated annual frequency of responses is on occasion.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

SECTION 9. DRAFTING INFORMATION

The principal author of this revenue procedure is Lilo A. Hester of the Office of the Associate Chief Counsel (International). For further information regarding the acceptance agent program, please contact Tom Logan of the Office of the Assistant Commissioner (International) on (202) 874–1800 (not a toll-free number).

Part IV. Items of General Interest

Notice of Proposed Rulemaking and Notice of Public Hearing

Classification of Certain Transactions Involving Computer Programs

REG–251520–96

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations relating to the tax treatment of certain transactions involving the transfer of computer programs. The proposed regulations provide rules for classifying such transactions as sales, licenses, leases, or the provision of services or of know-how under certain provisions of the Internal Revenue Code and tax treaties. This document also provides notice of a public hearing on the proposed regulations.

DATES: Comments must be received by February 11, 1997. Requests to speak (with outlines of oral comments) at a public hearing scheduled for March 19, 1997, at 10 a.m. must be submitted by February 26, 1997.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (REG–251520–96), room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. In the alternative, submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (REG–251520–96), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC. Alternately, taxpayers may submit comments electronically via the Internet by selecting the ''Tax Regs'' option on the IRS Home Page, or by submitting comments directly to the IRS Internet site at http:\\www.irs.ustreas.-gov\prod\tax_regs\comments.html. The public hearing will be held in the NYU Classroom, room 2615, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, William H. Morris, (202) 622–3880 or Carol P. Tello, (202) 622–3880; concerning submissions and the hearing, Christina Vasquez, (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

These regulations are proposed to clarify the treatment under certain provisions of the Internal Revenue Code (Code) and tax treaties of income from transactions involving computer programs.

I. Introduction

Computer programs are generally protected by copyright law. Typically the protection afforded by copyright law is a principal source of the value of a computer program to the owner of the copyright. Conversely, the principal source of the value of a computer program to the purchaser of a copy of the program is not the protection afforded by copyright law, but the right to use or sell the copy. In this regard, computer programs are similar to other copyrighted works such as books, records, motion pictures, etc. For example, when a copy of a book is purchased, the purchaser does not thereby also acquire any copyright rights. Accordingly, the proposed regulations generally distinguish between transactions in a copyright and in the subject of the copyright.

In developing regulations addressing the treatment of computer programs, the IRS and Treasury generally have been guided by the following principles: (i) the rules should take into account the special features of computer programs, such as the ability to deliver copies electronically as well as physically, and to make perfect copies at little or no cost, and (ii) wherever possible, transactions that are functionally equivalent should be treated similarly. For example, a transaction that involves the transfer for internal use only of fifty copies of a computer program should generally be treated the same as a transfer of one copy (for internal use) with the right to make forty-nine other copies all for internal use. Similarly, if the right to use a computer program is limited in time, the transaction should generally be treated the same irrespective of whether, at the end of the period of permitted use, a disk containing the computer program must be returned, or the program automatically deactivates itself.

II. Copyright Law Principles

Distinguishing between transactions in a copyright and in the subject of the copyright requires an examination of U.S. and foreign copyright law (e.g. EC Directive on Legal Protection of Computer Programs, 1991 (91/250/EEC); and the Berne Convention (Paris Text, July 24, 1971)). An overview of U.S. copyright law as it relates to computer programs is set forth below. However, the IRS and the Treasury do not purport in these regulations to interpret U.S. copyright law and these proposed regulations should not be taken as an expression of the legal or policy views of the U.S. Copyright Office.

The Copyright Act of 1976, as amended (17 U.S.C. 101 et seq.), provides protection against infringement of the exclusive rights of the owner of a copyright in original works of authorship, fixed in any tangible medium of expression, including literary works. (17 U.S.C. 102.) The term *literary works* is defined to include: ''. . . numbers, or other verbal or numerical symbols or indicia, regardless of the nature of the material objects, such as books, periodicals, manuscripts, phonorecords, film, tapes, disks, or cards, in which they are embodied.'' (17 U.S.C. 101.) Thus, computer programs are literary works for purposes of the Copyright Act.

The Copyright Act grants five exclusive rights to a copyright owner. Of these, three are most relevant in the case of computer programs: the right to reproduce copies of the copyrighted work (17 U.S.C. 106(1)); the right to prepare derivative works, which may themselves be separately copyrighted, based upon the copyrighted work (17 U.S.C. 103 and 106(2)); and the right to distribute copies of the copyrighted work to the public by sale or other transfer of ownership, or by rental, lease or lending (17 U.S.C. 106(3)). Additionally, in certain circumstances, the right to publicly perform the copyrighted work (17 U.S.C. 106(4)) and the right to publicly display the copyrighted work may also be relevant (17 U.S.C. 106(5)).

Thus, under U.S. copyright law, the user of a computer program who does not possess any of those five rights (or parts of them) has obtained only rights to use the copyrighted article it possesses. Generally, that user is treated only as having received a copy of the copyrighted work. Under U.S. copyright law, a copy is a material object in which a work is fixed by any method now known or later developed, and from which the work can be perceived, repro-

duced, or otherwise communicated, either directly or with the aid of a machine or device (17 U.S.C. 101.). In these proposed regulations a copy is also referred to as a ''copyrighted article.'' The distinction between copies and copyrights is made most clearly in section 202 of the Copyright Act which provides:

> Ownership of a copyright, or of any of the exclusive rights under a copyright, is distinct from ownership of any material object in which the work is embodied. Transfer of ownership of any material object, including the copy or phonorecord in which the work is first fixed, does not of itself convey any rights in the copyrighted work embodied in the object; nor, in the absence of an agreement, does transfer of ownership of a copyright or of any exclusive rights under a copyright convey property rights in any material object.

Certain rights pass to the purchaser of a copy of a computer program. The most important of these is the right to sell (but not, without permission, to lease, rent or lend) the copy to another person. (17 U.S.C. 109.) Additionally, the owner of a copy of a computer program has the right to make a copy of that copy as an essential step in the utilization of the program (e.g., copying to the memory of the computer) and may also make a copy for archival purposes. (17 U.S.C. 117.) If, however, the owner of the copy sells that copy, all copies made pursuant to the 17 U.S.C. 117 right must be destroyed. III. The Proposed Regulations and Copyright Law Principles

Although the proposed regulations are guided by copyright law principles in determining whether a copyright right or copyrighted article has been transferred, the regulations depart in some cases from a strict reliance on copyright law in order to take into account the special nature of computer programs and to treat functionally equivalent transactions in the same way. For example, the proposed regulations do not treat the transfer of a right to copy as the transfer of a copyright right, unless it is accompanied by the right to distribute the copies to the public.

Thus, where a corporation obtains the right, under an agreement, to make fifty copies of a program for use by its employees at one location (a site license) the transaction is not, for all practical purposes, any different from a transaction in which fifty individual disks are purchased. Accordingly, the proposed regulations treat the transaction as the transfer of a copyrighted article, rather than of a copyright right, despite a copyright law requirement that the corporation receive a ''license'' to make those fifty copies. Similarly, under the proposed regulations, the transfer of a computer program in perpetuity for internal use only on a single disk or set of disks in return for a one-time payment, in a transaction styled as a license of copyright rights (a so-called shrink wrap license), is treated as the sale of a copyrighted article and not the transfer of a copyright right. Therefore, such a transfer is classified solely as the sale of a copyrighted article for the purposes of the proposed regulations.

IV. Explanation of Provisions

Section 1.861–18(a)(1) of the proposed regulations describes the scope of the proposed regulations. These proposed regulations provide rules for classifying transfers of computer programs for the purposes of subchapter N of chapter 1 of the Internal Revenue Code, sections 367, 404A, 482, 551, 679, 1057, 1059A, chapter 3, chapter 5, sections 842 and 845 (to the extent involving a foreign person), and transfers to foreign trusts not covered by section 679.

Section 1.861–18(a)(2) describes the categories of transactions relating to computer programs. In particular, a transfer of a copyright right may be either a sale or license of that right and a transfer of a copyrighted article may be either a sale or lease of that copyrighted article. Section 1.861– 18(a)(3) defines the term *computer program.*

Section 1.861–18(b)(1) provides that a transaction involving the transfer of a computer program will be classified as either the transfer of a copyright right, the transfer of a copyrighted article, the provision of services relating to the development of a computer program, or the provision of know-how.

Section 1.861–18(b)(2) provides that a transaction involving computer programs which consists of more than one of the categories in paragraph (b)(1), is treated as separate transactions. Any resulting transaction that is de minimis, however, taking into account all facts and circumstances, will not be treated as a separate transaction.

Section 1.861–18(c)(1)(i) provides that the transfer of a computer program will be classified as the transfer of a copyright right if the transferee acquires one or more of the rights set forth in paragraph (c)(2).

Section 1.861–18(c)(1)(ii) provides that if such rights are not transferred and the transaction does not involve, or involves to only a de minimis extent, the provision of services or know- how, then the transaction will be classified solely as the transfer of a copyrighted article.

Section 1.861–18(c)(2) identifies those rights that will be treated as copyright rights for purposes of the proposed regulations. This list differs from the list of rights set out in the Copyright Act to take into account the special nature of computer programs. Specifically, the copyright law right to copy will only be treated as a copyright right for the purposes of the proposed regulations if it is accompanied by the right to distribute such copies to the public. The copyright rights that apply for purposes of this section are, in addition to the right to copy and distribute to the public, the right to prepare derivative computer programs, the right to make a public performance of the computer program, and the right to publicly display the computer program. The list of rights contained in § 1.861–18(c)(2) rather than those contained in the Copyright Act will apply for the purposes of the proposed regulations.

Section 1.861–18(c)(3) defines a copyrighted article as a copy of a computer program from which the work can be perceived, reproduced or otherwise communicated.

Section 1.861–18(d) of the proposed regulations provides rules for determining whether a transaction involving a newly- developed or modified computer program will be treated as the provision of services or another transaction described in paragraph (b)(1) of this section. The determination is based on all facts and circumstances, including how risk of loss is allocated and the intent of the parties as to ownership of the copyright. See, e.g., *Boulez v. Commissioner*, 83 T.C. 584 (1984); Rev. Rul. 74–555 (1974–2 C.B. 202); Rev. Rul. 84–78 (1984–1 C.B. 173).

Section 1.861–18(e) provides rules for determining whether a transfer of information related to a computer program will be considered the provision of know-how. A provision of know-how will not be considered to occur unless a party transfers information that (i) relates to computer programming techniques, (ii) is not capable of being copyrighted, and (iii) is protected by trade secret protection.

Under § 1.861–18(f)(1), if a transfer involves copyright rights, it will be further classified as either a sale or a

license of copyright rights. This classification will be made by examining whether, taking into account all facts and circumstances, all substantial rights, under the principles of sections 1222 and 1235, have passed to the transferee.

Under § 1.861–18(f)(2), if a transfer involves a copyrighted article, it will be further classified as either a sale or a lease of a copyrighted article. This classification will be made by examining whether the benefits and burdens of ownership have passed to the transferee. See, e.g., *Grodt & McKay Realty, Inc. v. Commissioner*, 77 T.C. 1221, 1237–38 (1981); *Torres v. Commissioner*, 88 T.C. 702, 720–27 (1987); *Estate of Thomas v. Commissioner*, 84 T.C. 412, 431–40 (1985).

Under § 1.861–18(f)(3), the determination of the classification of a transfer involving a copyright right or copyrighted article must appropriately consider the special nature of computer programs in transactions that take advantage of those characteristics. For example, a transaction in which a person acquires a copyrighted article on disk subject to a requirement that the disk be destroyed after a specified period is generally the equivalent of a requirement that the disk be returned after such period. Similarly, a transaction in which the program deactivates itself after a specified period may also be treated as the equivalent of returning the copy.

Section 1.861–18(g) of the proposed regulations provides certain additional rules of operation. Section 1.861–18(g)(1) provides that neither the form adopted by the parties to a transaction nor the classification of a transaction under copyright law are determinative for tax purposes. Therefore, as illustrated in Example 1, a transfer of a computer program on a disk subject to a shrink-wrap license will generally be a sale of a copyrighted article.

Section 1.861–18(g)(2) provides that the method of transferring the computer program, for example by disk or electronically, shall not be relevant in determining whether a copyright right or a copyrighted article has been transferred.

The foregoing rules are illustrated by a number of examples contained in § 1.861–18(h).

Under § 1.861–18(i), these regulations are proposed to apply to all transactions occurring on or after the date that is 60 days after the date the final regulations are published in the **Federal Register**. No inference should be drawn from the proposed effective date concerning the treatment of transactions involving computer programs entered into before the regulations are applicable.

The application of these rules for purposes of the affected Internal Revenue Code sections may result in a change in the method of accounting for certain transactions involving computer programs by certain taxpayers. If the final regulations are adopted, the IRS will consider issuing an automatic change revenue procedure to address the situation where the taxpayer is required to change its method of accounting to comport with the new regulations.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any comments that are submitted timely (in the manner described in the ADDRESSES caption) to the IRS. All comments will be available for public inspection and copying.

A public hearing has been scheduled for March 19, 1997, at 10 a.m. in the NYU Classroom, room 2615, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC. Because of access restrictions, visitors will not be admitted beyond the Internal Revenue Building lobby more than 15 minutes before the hearing starts.

The rules of 26 CFR 601.601(a)(3) apply to the hearing.

Persons that wish to present oral comments at the hearing must submit comments by February 11, 1997, and submit an outline of the topics to be discussed and the time to be devoted to each topic (in the manner described in the ADDRESSES caption) by February 26, 1997.

A period of 10 minutes will be allotted to each person for making comments.

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal authors of these regulations are William H. Morris and Carol P. Tello, of the Office of Associate Chief Counsel (International), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

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Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.861–18 is added to read as follows:

§ 1.861–18 Classification of transactions involving computer programs.

(a) *General*—(1) *Scope*. This section provides rules for classifying transactions relating to computer programs for purposes of subchapter N of chapter 1 of the Internal Revenue Code, sections 367, 404A, 482, 551, 679, 1057, 1059A, chapter 3, chapter 5, sections 842 and 845 (to the extent involving a foreign person), and transfers to foreign trusts not covered by section 679.

(2) *Categories of transactions*. This section generally requires that such transactions be treated as being solely within one of four categories (described in paragraph (b)(1) of this section) and provides certain rules for categorizing such transactions. In the case of a transfer of a copyright right, this section provides rules for determining whether the transaction should be classified as either a sale or exchange, or a license generating royalty income. In the case of a transfer of a copyrighted article, this section provides rules for determining whether the transaction should be

classified as either a sale or exchange, or a lease generating rental income.

(3) *Computer program.* For purposes of this section, a computer program is a set of statements or instructions to be used directly or indirectly in a computer in order to bring about a certain result. For purposes of this paragraph (a)(3), a computer program includes any data base or similar item if the data base or similar item is incidental to the operation of the computer program.

(b) *Categories of transactions*—(1) *General*. Except as provided in paragraph (b)(2) of this section, a transaction involving the transfer of, or the provision of services or of know-how with respect to, a computer program (collectively, a transfer of a computer program) is treated as being solely one of the following—

(i) A transfer of a copyright right in the computer program;

(ii) A transfer of a copy of the computer program (a copyrighted article);

(iii) The provision of services for the development or modification of the computer program; or

(iv) The provision of know-how relating to computer programming techniques.

(2) *Transactions consisting of more than one category.* Any transaction involving computer programs which consists of more than one of the transactions described in paragraph (b)(1) of this section shall be treated as separate transactions, with the appropriate provisions of this section being applied to each such transaction. However, any transaction that is de minimis, taking into account the overall transaction and the surrounding facts and circumstances, shall not be treated as a separate transaction, but as part of another transaction.

(c) *Transfers involving both a copyright right and a copyrighted article*—(1) *Classification*—(i) *Transfers treated as transfers of copyright rights*. A transfer of a computer program is classified as a transfer of a copyright right if, as a result of the transaction, a person acquires any one or more of the rights described in paragraphs (c)(2)(i) through (iv) of this section. For example, if a person receives a disk containing a copy of a computer program which enables it to exercise, in relation to that program, a non-de minimis right described in paragraphs (c)(2)(i) through (iv) of this section (and the transaction does not involve, or involves only a de minimis provision of services as described in paragraph (d) of this section or of know-how as described in paragraph (e) of this section), then, under paragraph (b)(2) of this section, the transfer is classified solely as a transfer of a copyright right.

(ii) *Transfers treated solely as transfers of copyrighted articles*. If a person acquires a copy of a computer program but does not acquire any of the rights described in paragraphs (c)(2)(i) through (iv) of this section (and the transaction does not involve, or involves only a de minimis provision of services as described in paragraph (d) of this section or of know-how as described in paragraph (e) of this section), the transfer of the copy of the computer program is classified solely as a transfer of a copyrighted article.

(2) *Copyright rights*. The copyright rights referred to in paragraph (c)(1) of this section are as follows—

(i) The right to make copies of the computer program for purposes of distribution to the public by sale or other transfer of ownership, or by rental, lease or lending;

(ii) The right to prepare derivative computer programs based upon the copyrighted computer program;

(iii) The right to make a public performance of the computer program; or

(iv) The right to publicly display the computer program.

(3) *Copyrighted article*. A copyrighted article is a copy of a computer program from which the work can be perceived, reproduced or otherwise communicated, either directly or with the aid of a machine or device. The copy of the program may be fixed in the magnetic medium of a floppy disk or in the main memory or hard drive of a computer.

(d) *Provision of services*. The determination of whether a transaction involving a newly developed or modified computer program is treated as either the provision of services or another transaction described in paragraph (b)(1) of this section is based on all the facts and circumstances of the transaction, including, as appropriate, the intent of the parties (as evidenced by their agreement and conduct) as to which party is to own the copyright rights in the computer program and how the risks of loss are allocated between the parties.

(e) *Provision of know-how*. The provision of information with respect to a computer program will not be treated as the provision of know-how for the purposes of this section unless the information is—

(1) Information relating to computer programming techniques;

(2) Not capable itself of being copyrighted; and

(3) Subject to trade secret protection.

(f) *Further classification of transfers involving copyright rights and copyrighted articles*—(1) *Transfers of copyright rights*. The determination of whether a transfer of a copyright right is a sale or exchange of property is made on the basis of whether, taking into account all facts and circumstances, there has been a transfer of all substantial rights in the copyright. A transaction that does not constitute a sale or exchange because not all substantial rights have been transferred will be classified as a license generating royalty income. For this purpose, the principles of sections 1222 and 1235 shall apply.

(2) *Transfers of copyrighted articles*. The determination of whether a transfer of a copyrighted article is a sale or exchange is made on the basis of whether, taking into account all facts and circumstances, the benefits and burdens of ownership have been transferred. A transaction that does not constitute a sale or exchange because insufficient benefits and burdens of ownership of the copyrighted article have been transferred, such that a person other than the transferee is properly treated as the owner of the copyrighted article, will be classified as a lease generating rental income.

(3) *Special circumstances of computer programs*. In connection with determinations under this paragraph (f), consideration must be given as appropriate to the special characteristics of computer programs in transactions that take advantage of these characteristics (such as the ability to make perfect copies at minimal cost). For example, a transaction in which a person acquires a copy of a computer program on disk subject to a requirement that the disk be destroyed after a specified period is generally the equivalent of a transaction subject to a requirement that the disk be returned after such period. Similarly, a transaction in which the program deactivates itself after a specified period is generally the equivalent of returning the copy.

(g) *Rules of operation*—(1) *Term applied to transaction by parties*. Neither the form adopted by the parties to a transaction, nor the classification of the transaction under copyright law, shall be determinative. Therefore, for example, if there is a transfer of a computer pro-

gram on a single disk for a one-time payment with restrictions on transfer and reverse engineering, which the parties characterize as a license (generally referred to as a shrink-wrap license), application of the rules of paragraphs (c) and (f) of this section may nevertheless result in the transaction being classified as the sale of a copyrighted article.

(2) *Means of transfer not to be taken into account*. The rules of this section shall be applied irrespective of the physical or electronic medium used to effectuate a transfer of a computer program.

(h) *Examples*. The provisions of this section may be illustrated by the following examples. All of the following examples assume that all parties are unrelated to each other:

Example 1. (i) *Facts*. Corp A, a U.S. corporation, owns the copyright in a computer program, Program X. It copies Program X on to disks. The disks are placed in boxes covered with a wrapper on which is printed what is generally referred to as a shrink-wrap license. The license is stated to be perpetual. Under the license no reverse engineering of the computer program is permitted. The transferee receives, first, the right to use the program on two of its own computers (for example, a laptop and a desktop) provided that only one copy is in use at any one time, and, second, the right to make one copy of the program on each machine as an essential step in the utilization of the program. The transferee is permitted by the shrink-wrap license to sell the copy so long as it destroys any other copies it has made and imposes the same terms and conditions of the license on the purchaser of its copy. These disks are made available for sale to the general public in Country Z. In return for valuable consideration, P, a Country Z resident, receives one such disk.

(ii) *Analysis*. (A) Under paragraph (g)(1) of this section, the label license is not determinative. None of the copyright rights described in paragraph (c)(2) of this section have been transferred in this transaction. P has received a copy of the program, however, and, therefore, under paragraph (c)(1)(ii) of this section, P has acquired solely a copyrighted article.

(B) Taking into account all of the facts and circumstances, P is properly treated as the owner of a copyrighted article. Therefore, under paragraph (f)(2) of this section, there has been a sale of a copyrighted article rather than the grant of a lease.

Example 2. (i) *Facts*. The facts are the same as those in Example 1, except that instead of selling disks, Corp A, the U.S. corporation, decides to make Program X available, for a fee, on a World Wide Web home page on the Internet. P, the Country Z resident, in return for payment made to Corp A, downloads Program X (via modem) onto the hard drive of his computer. As part of the electronic communication, P signifies his assent to a license agreement with terms identical to those in Example 1, except that in this case P may make a back-up copy of the program on to a disk.

(ii) *Analysis*. (A) None of the copyright rights described in paragraph (c)(2) of this section have passed to P. Although P did not buy a physical copy of the disk with the program on it, paragraph (g)(2) of this section provides that the means of transferring the program is irrelevant. Therefore, P has acquired a copyrighted article.

(B) As in *Example 1*, P is properly treated as the owner of a copyrighted article. Therefore, under paragraph (f)(2) of this section, there has been a sale of a copyrighted article rather than the grant of a lease.

Example 3. (i) *Facts*. The facts are the same as those in Example 1, except that Corp A only allows P, the Country Z resident, to use Program X for one week. At the end of that week, P must return the disk with Program X on it to Corp A. P must also destroy any copies made of Program X. If P wishes to use Program X for a further period he must enter into a new agreement to use the program for an additional charge.

(ii) *Analysis*. (A) Under paragraph (c)(2) of this section, P has received no copyright rights. Because P has received a copy of the program under paragraph (c)(1)(ii) of this section, he has, therefore, received a copyrighted article.

(B) Taking into account all of the facts and circumstances, P is not properly treated as the owner of a copyrighted article. Therefore, under paragraph (f)(2) of this section, there has been a lease of a copyrighted article rather than a sale. Taking into account the special characteristics of computer programs as provided in paragraph (f)(3) of this section, the result would be the same if P were required to destroy the disk at the end of the one week period instead of returning it since Corp A can make additional copies of the program at minimal cost.

Example 4. (i) *Facts*. The facts are the same as those in Example 2, where P, the Country Z resident, receives Program X from Corp A's home page on the Internet, except that P may only use Program X for a period of one week at the end of which an electronic lock is activated and the program can no longer be accessed. Thereafter, if P wishes to use Program X, it must return to the home page and pay Corp A to send an electronic key to reactivate the program for another week.

(ii) *Analysis*. (A) As in *Example 3*, under paragraph (c)(2) of this section, P has not received any copyright rights. P has received a copy of the program, and under paragraph (g)(2) of this section, the means of transmission is irrelevant, P has, therefore, under paragraph (c)(1)(ii) of this section, received a copyrighted article.

(B) As in *Example 3*, P is not properly treated as the owner of a copyrighted article. Therefore, under paragraph (f)(2) of this section, there has been a lease of a copyrighted article rather than a sale. While P does retain Program X on its computer at the end of the one week period, as a legal matter P no longer has the right to use the program (without further payment) and, indeed, cannot use the program without the electronic key. Functionally, Program X is no longer on the hard drive of P''s computer. Instead, the hard drive contains only a series of numbers which no longer perform the function of Program X. Although in *Example 3*, P was required to physically return the disk, taking into account the special characteristics of computer programs as provided in paragraph (f)(3) of this section, the result in this *Example 4* is the same as in *Example 3*.

Example 5. (i) *Facts*. Corp A, a U.S. corporation, transfers a disk containing Program X to Corp B, a Country Z corporation, and grants Corp B an exclusive license for the remaining term of the copyright to copy and distribute an unlimited number of copies of Program X in the geographic area of Country Z, prepare derivative works based upon Program X, make public performances of Program X, and publicly display Program X. Corp B will pay Corp A a royalty of $y a year for three years, which is the expected period during which Program X will have commercially exploitable value.

(ii) *Analysis*. (A) Although Corp A has transferred a disk with a copy of Program X on it to Corp B, under paragraph (c)(1)(i) of this section because this transfer is accompanied by a copyright right identified in paragraph (c)(2)(i) of this section, this transaction is a transfer solely of copyright rights, not of copyrighted articles. For purposes of paragraph (b)(2) of this section, the disk containing a copy of Program X is a de minimis component of the transaction.

(B) Applying the all substantial rights test under paragraph (f)(1) of this section, Corp A will be treated as having sold copyright rights to Corp B. Corp B has acquired all of the copyright rights in Program X, has received the right to use them exclusively within a geographic area, and has received the rights for the remaining life of the copyright in Program X. Under paragraph (g)(1) of this section, the fact that the agreement is labelled a license is not controlling (nor is the fact that Corp A receives a sum labelled a royalty). (This would also be the case if the copy of Program X to be used for the purposes of reproduction were transmitted electronically to Corp B, as a result of the application of the rule of paragraph (g)(2) of this section.)

Example 6. (i) *Facts*. Corp A, a U.S. corporation, transfers a disk containing Program X to Corp B, a Country Z corporation, and grants Corp B the non exclusive right to reproduce and distribute for sale to the public an unlimited number of disks at its factory in Country Z in return for a payment related to the number of disks copied and sold. The term of the agreement is two years, which is less than the remaining life of the copyright.

(ii) *Analysis*. (A) As in *Example 5*, the transfer of the disk containing the copy of the program does not constitute the transfer of a copyrighted article under paragraph (c)(1) of this section because Corp B has also acquired a copyright right under paragraph (c)(2)(i) of this section. For purposes of paragraph (b)(2) of this section, the disk containing Program X is a de minimis component of the transaction.

(B) Taking into account all of the facts and circumstances, there has been a license of Program X to Corp B, and the payments made by Corp B are royalties. Under paragraph (f)(1) of this section, there has not been a transfer of all substantial rights in the copyright to Program X because Corp A has the right to enter into other licenses with respect to the copyright of Program X, including in Country Z (or even to sell that copyright, subject to Corp B's interest). Corp B has acquired no right itself to license the copyright rights in Program X. Finally, the term of the license is for less than the remaining life of the copyright in Program X.

Example 7. (i) *Facts*. Corp C, a distributor in Country Z, enters into an agreement with Corp A, a U.S. corporation, to purchase as many copies of Program X on disk as it may from time- to-time request. Corp C will then sell these disks to retailers. The disks are shipped in boxes covered by shrink-wrap licenses (identical to the license described in *Example 1*).

(ii) *Analysis*. (A) Corp C has not acquired any copyright rights under paragraph (c)(2) of this section with respect to Program X. It has acquired individual copies of Program X, which it may sell to others. The use of the term license is not dispositive under paragraph (g)(1) of this section. Under paragraph (c)(1)(ii) of this section, Corp C has acquired copyrighted articles.

(B) Taking into account all of the facts and circumstances, Corp C is properly treated as the owner of copyrighted articles. Therefore, under paragraph (f)(2) of this section, there has been a sale of copyrighted articles.

Example 8. (i) *Facts*. Corp A, a U.S. corporation, transfers a disk containing Program X to Corp D, a foreign corporation engaged in the manufacture and sale of personal computers in Country Z. Corp A grants Corp D the non-exclusive right to copy Program X onto the hard drive of computers which it manufactures, and to distribute those copies (on the hard drive) to the public. The term of the agreement is two years, which is less than the remaining life of the copyright in Program X. Corp D pays Corp A an amount based on the number of copies of Program X it loads on to computers.

(ii) *Analysis*. The analysis is the same as in *Example 6*. Under paragraph (c)(2)(i) of this section, Corp D has acquired a copyright right enabling it to exploit Program X by copying it on to the hard drives of the computers that it manufactures and then sells. For purposes of paragraph (b)(2) of this section, the disk containing Program X is a de minimis component of the transaction. Taking into account all of the facts and circumstances, Corp D has not, however, acquired all substantial rights in the copyright to Program X (for example, the term of the agreement is less than the remaining life of the copyright). Under paragraph (f)(1) of this section, this transaction is, therefore, a license of Program X to Corp D rather than a sale and the payments made by Corp D are royalties.

Example 9. (i) *Facts*. The facts are the same as in Example 8, except that Corp D, the Country Z corporation, receives physical disks. The disks are shipped in boxes covered by shrink-wrap licenses (identical to the licenses described in *Example 1*). Corp D uses each individual disk only once to load a single copy of Program X onto each separate computer. Corp D transfers the disk with the computer when it is sold.

(ii) *Analysis*. (A) As in *Example 7* (unlike *Example 8*) no copyright right identified in paragraph (c)(2) of this section has been transferred. Corp D acquires the disks without the right to reproduce and distribute publicly further copies of Program X. This is therefore the transfer of copyrighted articles under paragraph (c)(1)(ii) of this section.

(B) Taking into account all of the facts and circumstances, Corp D is properly treated as the owner of copyrighted articles. Therefore, under paragraph (f)(2) of this section, the transaction is classified as the sale of a copyrighted article.

Example 10. (i) *Facts*. Corp A, a U.S. corporation, transfers a disk containing Program X to Corp E, a Country Z corporation, and grants Corp E the right to load Program X onto 50 individual workstations for use only by Corp E employees at one location in return for a one-time per-user fee (generally referred to as a site license). If additional workstations are subsequently introduced, Program X may be loaded on to those machines for additional one-time per-user fees. The license which grants the rights to operate Program X on 50 workstations also prohibits Corp E from selling the disk (or any of the 50 copies) or reverse engineering the program. The term of the license is stated to be perpetual.

(ii) *Analysis*. (A) The grant of a right to copy, unaccompanied by the right to distribute those copies to the public, is not the transfer of a copyright right under paragraph (c)(2) of this section. Therefore, under paragraph (c)(1)(ii) of this section, this transaction is a transfer of copyrighted articles (50 copies of Program X).

(B) Taking into account all of the facts and circumstances, P is properly treated as the owner of a copyrighted article. Therefore, under paragraph (f)(2) of this section, there has been a sale of copyrighted articles rather than the grant of a lease. Notwithstanding the restriction on sale, other factors such as, for example, the risk of loss and the right to use the copies in perpetuity outweigh, in this case, the restrictions placed on the right of alienation.

Example 11. (i) *Facts*. The facts are the same as in Example 10, except that Corp E, the Country Z corporation, acquires the right to make Program X available to workstation users who are Corp E employees by way of a local area network (LAN). The number of users that can use Program X on the LAN at any one time is limited to 50. Corp E pays a one-time fee for the right to have up to 50 employees use the program at the same time.

(ii) *Analysis.* Under paragraph (g)(2) of this section the mode of transmission is irrelevant. Therefore, as in *Example 10*, under paragraph (c)(2) of this section, no copyright right has been transferred and thus, under paragraph (c)(1)(ii) of this section, this transaction will be classified as the transfer of a copyrighted article. Under the benefits and burdens test of paragraph (f)(2) of this section, this transaction is a sale of copyrighted articles.

Example 12. (i) *Facts*. The facts are the same as in *Example 11*, except that Corp E pays a monthly fee to Corp A, the U.S. corporation, calculated with reference to the permitted maximum number of users (which can be changed) and the computing power of Corp E's server. In return for this monthly fee, Corp C receives the right to receive upgrades of Program X when they become available. The agreement may be terminated by either party at the end of any month. When the disk containing the upgrade is received, or if the contract is terminated, Corp E must return the disk containing the earlier version of Program X to Corp A, and delete (or otherwise destroy) any copies made of the current version of Program X. The agreement specifically provides that Corp E has not thereby been granted an option to purchase Program X.

(ii) *Analysis.* (A) Corp E has received no copyright rights under paragraph (c)(2) of this section. Under paragraph (d) of this section, based on all the facts and circumstances of the transaction, Corp A has not provided services to Corp E. Therefore, under paragraph (c)(1)(ii) of this section, the transaction is a transfer of a copyrighted article.

(B) Taking into account all facts and circumstances, under the benefits and burdens test Corp E is not properly treated as the owner of the copyrighted article. Corp E does not receive the right to use Program X in perpetuity, but only for so long as it continues to make payments. Corp E does not have the right to purchase Program X on advantageous (or, indeed, any) terms once a certain amount of money has been paid to Corp A or a certain period of time has elapsed (which might indicate a sale). Once the agreement is terminated, Corp E will no longer possess any copies of Program X, current or superseded. Therefore under paragraph (f)(2) of this section there has been a lease of a copyrighted article.

Example 13. (i) *Facts*. The facts are the same as in *Example 12*, except that while Corp E must return copies of Program X as new upgrades are received, if the agreement terminates, Corp E may keep the latest version of Program X (although Corp E is still prohibited from selling or otherwise transferring any copy of Program X).

(ii) *Analysis*. For the reasons stated in *Example 10*, the transfer of the program will be treated as a sale of a copyrighted article rather than as a lease.

Example 14. (i) *Facts*. Corp G, a Country Z corporation, enters into a contract with Corp A, a U.S. corporation, for Corp A to modify Program X so that it can be used at Corp G's facility in Country Z. Under the contract, Corp G is to acquire one copy of the program on a disk and the right to use the program on 5,000 workstations. The contract requires Corp A to rewrite elements of Program X so that it will conform to Country Z accounting standards. The services required to perform this task are de minimis taking into account the facts and circumstances of this transaction. The agreement between Corp A and Corp G is otherwise identical as to rights and payment terms as the agreement described in *Example 10*.

(ii) *Analysis*. (A) As in *Example 10*, no copyright rights are being transferred under paragraph (c)(2) of this section. Under paragraph (b)(2) of this section, the services provided are de minimis. This transaction will be classified, therefore, as a transfer of copyrighted articles under paragraph (c)(1)(ii) of this section.

(B) Taking into account all facts and circumstances, Corp G is properly treated as the owner of copyrighted articles. Therefore, under paragraph (f)(2) of this section, there has been the sale of a copyrighted article rather than the grant of a lease.

Example 15. (i) *Facts*. Corp H, a Country Z corporation, enters into a license agreement for a modified version of Program X only if Corp A, a U.S. corporation, makes substantial modifications to the program. Only the core idea of Program X will be used and a considerable amount of labor will be expended in rewriting Program X, which under applicable copyright law as a derivative work will be a separate, new program. Corp A and Corp H agree that Corp A is modifying Program X for Corp H and that, when modified Program X is completed, the copyright in the modified program will belong to Corp H. Corp H gives instructions to Corp A programmers regarding program specifications. Corp H agrees to pay Corp A a fixed monthly sum during development of the program. If Corp H is dissatisfied with the development of the program it may cancel the contract at the end of any month. In the event of termination, Corp A will retain all payments, while any procedures, techniques or copyrightable interests will be the property of Corp H. All of the payments are labelled royalties. There is no provision in the agreement for any continuing relationship between Corp A and Corp H, such as the furnishing of updates of the program, after completion of the modification work.

(ii) *Analysis*. Taking into account all of the facts and circumstances, Corp A is treated as providing services to Corp H. Under paragraph (d) of this section, Corp A is treated as providing services to Corp H because Corp H bears all of the risks of loss associated with the development of modified Program X and is the owner of all copyright rights in modified Program X. Under paragraph (g)(1) of this section, the fact that the agreement is labelled a license is not controlling (nor is the fact that Corp A receives a sum labelled a royalty).

Example 16. (i) *Facts*. Corp A, a U.S. corporation, and Corp I, a Country Z corporation, agree that a development engineer employed by Corp A will travel to Country Z to provide know-how relating to certain techniques which are not generally known to computer programmers which will enable Corp I to more efficiently create computer

programs. These techniques represent the product of experience gained by Corp A from working on many computer programming projects. Such information is not capable of being copyrighted, but it is subject to trade secret protection.

(ii) *Analysis*. This transaction contains the elements of know-how specified in paragraph (e) of this section. Therefore, this transaction will be classified as the provision of know-how.

(i) *Effective date*. This section applies to transactions occurring on or after the date that is sixty days after the date final regulations are published in the **Federal Register.**

Margaret Milner Richardson,
Commissioner of Internal Revenue.

(Filed by the Office of the Federal Register on November 7, 1996, 3:11 p.m., and published in the issue of the Federal Register for November 13, 1996, 61 F.R. 58152)

Foundations Status of Certain Organizations

Announcement 96–125

The following organizations have failed to establish or have been unable to maintain their status as public charities or as operating foundations. Accordingly, grantors and contributors may not, after this date, rely on previous rulings or designations in the Cumulative List of Organizations (Publication 78), or on the presumption arising from the filing of notices under section 508(b) of the Code. This listing does *not* indicate that the organizations have lost their status as organizations described in section 501(c)(3), eligible to receive deductible contributions.

Former Public Charities. The following organizations (which have been treated as organizations that are not private foundations described in section 509(a) of the Code) are now classified as private foundations:

Adopt a Cow, Montpelier, VT
Ads Against AIDS, Inc., New York, NY
Airport Gardens Resident Association, Chapel Hill, NC
A Place for Kids, New York, NY
Blytheville Fine Arts Council, Blytheville, AR
Children's AIDS Network, Inc., Portland, ME
Christian Fellowship Alive Ministries Inc., Lakeland, FL
Class of 1967 Scholarship Fund, Jasper, AL
454–458 West 35th Street Housing Development Fund Corporation, New York, NY
Healthier People Network, Inc., Decatur, GA
Holland II House for the Homeless Handicapped, Detroit, MI
Institute on Law Firm Management, Ann Arbor, MI
Jaga Learning Center, Little Rock, AR
Metro Ministries of Miami Inc., Miami, FL
Northwest Corridor Community Development Corporation, Charlotte, NC
Research Education and Analysis Center for Toxics Foundation Inc., Texas City, TX
Royal Terrace Inc., Jackson, MS
Silas Day Care Center Inc., Silas, AL
Sonrise Retreat, Inc., East Palatka, FL
32nd Precinct Community Council Inc., New York, NY

If an organization listed above submits information that warrants the renewal of its classification as a public charity or as a private operating foundation, the Internal Revenue Service will issue a ruling or determination letter with the revised classification as to foundation status. Grantors and contributors may thereafter rely upon such ruling or determination letter as provided in section 1.509(a)–7 of the Income Tax Regulations. It is not the practice of the Service to announce such revised classification of foundation status in the Internal Revenue Bulletin.

Announcement of the Disbarment, Suspension, or Consent to Voluntary Suspension of Attorneys, Certified Public Accountants, Enrolled Agents, and Enrolled Actuaries From Practice Before the Internal Revenue Service

Under 31 Code of Federal Regulations, Part 10, an attorney, certified public accountant, enrolled agent, or enrolled actuary, in order to avoid the institution or conclusion of a proceeding for his disbarment or suspension from practice before the Internal Revenue Service, may offer his consent to suspension from such practice. The Director of Practice, in his discretion, may suspend an attorney, certified public accountant, enrolled agent, or enrolled actuary in accordance with the consent offered.

Attorneys, certified public accountants, enrolled agents, and enrolled actuaries are prohibited in any Internal Revenue Service matter from directly or indirectly employing, accepting assistance from, being employed by or sharing fees with, any practitioner disbarred or suspended from practice before the Internal Revenue Service.

To enable attorneys, certified public accountants, enrolled agents, and enrolled actuaries to identify practitioners under consent suspension from practice before the Internal Revenue Service, the Director of Practice will announce in the Internal Revenue Bulletin the names and addresses of practitioners who have been suspended from such practice, their designation as attorney, certified public accountant, enrolled agent, or enrolled actuary, and date or period of suspension. This announcement will appear in the weekly Bulletin at the earliest practicable date after such action and will continue to appear in the weekly Bulletins for five successive weeks or for as many weeks as is practicable for each attorney, certified public accountant, enrolled agent, or enrolled actuary so suspended and will be consolidated and published in the Cumulative Bulletin.

The following individuals have been placed under consent suspension from practice before the Internal Revenue Service:

Name	Address	Designation	Date of Suspension
Lamb, Gordon W.	Pullman, WA	CPA	September 1, 1996 to January 31, 1997
Anderson, Randall S.	Arlington Hgts, IL	CPA	September 1, 1996 to February 28, 1998
Broderick, William J.	Farmington Hills, MI	CPA	September 1, 1996 to November 30, 1996
Ruggiero, John M.	Rutland, VT	Attorney	September 1, 1996 to October 31, 1996
Eklund, Mark	Portland, OR	CPA	September 1, 1996 to February 28, 1997
Stayner, G. Craig	Salt Lake City, UT	CPA	September 15, 1996 to June 14, 1997
Allen, Lehman D.	Lubbock, TX	CPA	September 20, 1996 to September 19, 1998
Hardgrove, David L.	Amarillo, TX	CPA	September 21, 1996 to June 20, 1997
Trader, John H.	Kansas City, MO	Attorney	September 30, 1996 to March 29, 1997
Schmertz, Carl D.	Wilmette, IL	CPA	October 1, 1996 to March 31, 1999
Bengston, Wessel	Chicago, IL	CPA	October 15, 1996 to April 14, 1997

Announcement of the Expedited Suspension of Attorneys, Certified Public Accountants, Enrolled Agents, and Enrolled Actuaries From Practice Before The Internal Revenue Service

Under title 31 of the Code of Federal Regulations, section 10.76, the Director of Practice is authorized to immediately suspend from practice before the Internal Revenue Service any practitioner who, within five years, from the date the expedited proceeding is instituted, (1) has had a license to practice as an attorney, certified public accountant, or actuary suspended or revoked for cause; or (2) has been convicted of any crime under title 26 of the United States Code or, of a felony under title 18 of the United States Code involving dishonesty or breach of trust.

Attorneys, certified public accountants, enrolled agents, and enrolled actuaries are prohibited in any Internal Revenue Service matter from directly or indirectly employing, accepting assistance from, being employed by, or sharing fees with, any practitioner disbarred or suspended from practice before the Internal Revenue Service.

To enable attorneys, certified public accountants, enrolled agents, and enrolled actuaries to identify practitioners under expedited suspension from practice before the Internal Revenue Service, the Director of Practice will announce in the Internal Revenue Bulletin the names and addresses of practitioners who have been suspended from such practice, their designation as attorney, certified public accountant, enrolled agent, or enrolled actuary, and date or period of suspension. This announcement will appear in the weekly Bulletin at the earliest practicable date after such action and will continue to appear in the weekly Bulletins for five successive weeks or for as many weeks as is practicable for each attorney, certified public accountant, enrolled agent, or enrolled actuary so suspended and will be consolidated and published in the Cumulative Bulletin.

The following individuals have been placed under suspension from practice before the Internal Revenue Service by virtue of the expedited proceeding provisions of the applicable regulations:

Name	Address	Designation	Date of Suspension
Alleva, Donald	Mount Vernon, NY	Enrolled Agent	Indefinite from September 5, 1996
Rose, Robert M.	Dallas, TX	Attorney	Indefinite from September 5, 1996
McGrath, Gregory	New Smyrna Bch, FL	CPA	Indefinite from September 8, 1996
Finch, Kenneth L. Jr.	Pelham, AL	CPA	Indefinite from September 8, 1996

Definition of Terms

Revenue rulings and revenue procedures (hereinafter referred to as "rulings") that have an effect on previous rulings use the following defined terms to describe the effect:

Amplified describes a situation where no change is being made in a prior published position, but the prior position is being extended to apply to a variation of the fact situation set forth therein. Thus, if an earlier ruling held that a principle applied to A, and the new ruling holds that the same principle also applies to B, the earlier ruling is amplified. (Compare with *modified*, below).

Clarified is used in those instances where the language in a prior ruling is being made clear because the language has caused, or may cause, some confusion. It is not used where a position in a prior ruling is being changed.

Distinguished describes a situation where a ruling mentions a previously published ruling and points out an essential difference between them.

Modified is used where the substance of a previously published position is being changed. Thus, if a prior ruling held that a principle applied to A but not to B, and the new ruling holds that it applies to both A and B, the prior ruling is modified because it corrects a published position. (Compare with *amplified* and *clarified*, above).

Obsoleted describes a previously published ruling that is not considered determinative with respect to future transactions. This term is most commonly used in a ruling that lists previously published rulings that are obsoleted because of changes in law or regulations. A ruling may also be obsoleted because the substance has been included in regulations subsequently adopted.

Revoked describes situations where the position in the previously published ruling is not correct and the correct position is being stated in the new ruling.

Superseded describes a situation where the new ruling does nothing more than restate the substance and situation of a previously published ruling (or rulings). Thus, the term is used to republish under the 1986 Code and regulations the same position published under the 1939 Code and regulations. The term is also used when it is desired to republish in a single ruling a series of situations, names, etc., that were previously published over a period of time in separate rulings. If the new ruling does more than restate the substance of a prior ruling, a combination of terms is used. For example, *modified* and *superseded* describes a situation where the substance of a previously published ruling is being changed in part and is continued without change in part and it is desired to restate the valid portion of the previously published ruling in a new ruling that is self contained. In this case the previously published ruling is first modified and then, as modified, is superseded.

Supplemented is used in situations in which a list, such as a list of the names of countries, is published in a ruling and that list is expanded by adding further names in subsequent rulings. After the original ruling has been supplemented several times, a new ruling may be published that includes the list in the original ruling and the additions, and supersedes all prior rulings in the series.

Suspended is used in rare situations to show that the previous published rulings will not be applied pending some future action such as the issuance of new or amended regulations, the outcome of cases in litigation, or the outcome of a Service study.

Abbreviations

The following abbreviations in current use and formerly used will appear in material published in the Bulletin.

A—Individual.

Acq.—Acquiescence.

B—Individual.

BE—Beneficiary.

BK—Bank.

B.T.A.—Board of Tax Appeals.

C.—Individual.

C.B.—Cumulative Bulletin.

CFR—Code of Federal Regulations.

CI—City.

COOP—Cooperative.

Ct.D.—Court Decision.

CY—County.

D—Decedent.

DC—Dummy Corporation.

DE—Donee.

Del. Order—Delegation Order.

DISC—Domestic International Sales Corporation.

DR—Donor.

E—Estate.

EE—Employee.

E.O.—Executive Order.

ER—Employer.

ERISA—Employee Retirement Income Security Act.

EX—Executor.

F—Fiduciary.

FC—Foreign Country.

FICA—Federal Insurance Contribution Act.

FISC—Foreign International Sales Company.

FPH—Foreign Personal Holding Company.

F.R.—Federal Register.

FUTA—Federal Unemployment Tax Act.

FX—Foreign Corporation.

G.C.M.—Chief Counsel's Memorandum.

GE—Grantee.

GP—General Partner.

GR—Grantor.

IC—Insurance Company.

I.R.B.—Internal Revenue Bulletin.

LE—Lessee.

LP—Limited Partner.

LR—Lessor.

M—Minor.

Nonacq.—Nonacquiescence.

O—Organization.

P—Parent Corporation.

PHC—Personal Holding Company.

PO—Possession of the U.S.

PR—Partner.

PRS—Partnership.

PTE—Prohibited Transaction Exemption.

Pub. L.—Public Law.

REIT—Real Estate Investment Trust.

Rev. Proc.—Revenue Procedure.

Rev. Rul.—Revenue Ruling.

S—Subsidiary.

S.P.R.—Statements of Procedural Rules.

Stat.—Statutes at Large.

T—Target Corporation.

T.C.—Tax Court.

T.D.—Treasury Decision.

TFE—Transferee.

TFR—Transferor.

T.I.R.—Technical Information Release.

TP—Taxpayer.

TR—Trust.

TT—Trustee.

U.S.C.—United States Code.

X—Corporation.

Y—Corporation.

Z—Corporation.

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8684, 1996–44 I.R.B. *4*

[1]A cumulative list of all Revenue Rulings, Revenue Procedures, Treasury Decisions, etc., published in Internal Revenue Bulletins 1996–1 through 1996–26 will be found in Internal Revenue Bulletin 1996–27, dated July 1, 1996.

Finding List of Current Action on Previously Published Items[1]

Bulletins 1996–27 through 1996–47

*Denotes entry since last publication

Revenue Procedures:

80–27
Modified by
96–40, 1996–32 I.R.B. *8*

87–32
Modified by
TD 8680, 1996–33 I.R.B. *5*

92–20
Modified by
TD 8680, 1996–33 I.R.B. *5*

95–16
Superseded by
96–48, 1996–39 I.R.B. *10*

95–29
Superseded by
96–36, 1996–27 I.R.B. *11*

95–29A
Superseded by
96–36, 1996–27 I.R.B. *11*

95–30
Superseded by
96–42, 1996–32 I.R.B. *14*

95–46
Superseded by
96–48, 1996–39 I.R.B. *10*

96–41
Modified by
Notice 96–49, 1996–41 I.R.B. *6*

96–46
Supplemented by
96–51, 1996–47 I.R.B. *10*

[1]A cumulative finding list for previously published items mentioned in Internal Revenue Bulletins 1996–1 through 1996–26 will be found in Internal Revenue Bulletin 1996–27, dated July 1, 1996.